

ANN BIRMINGHAM SCHEEL
Acting United States Attorney
District of Arizona
RUI WANG
Assistant U.S. Attorney
United States Courthouse
405 W. Congress St., Suite 4800
Tucson, Arizona 85701-5040
Telephone: (520) 620-7300
Email: rui.wang@usdoj.gov
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Arnold Lindsay,

Defendant.

CR 11-03574-TUC-DCB (BPV)

PLEA AGREEMENT

~~(DRAFT)~~

The United States of America and the defendant agree to the following disposition of this matter:

PLEA

The defendant agrees to plead guilty to Count 1 of the Indictment charging him with a violation of Title 18, United States Code, Section 111(a)(1), Assault on a Federal Officer, a felony. In exchange for pleading guilty in this matter, the Indictment charging the defendant with violations of Title 18, United States Code, Section 115, Threatening a Federal Officer and Threatening the Family of a Federal Officer in case CR-11-2149-TUC-JGZ-BPV shall be dismissed at the time of sentencing.

STIPULATIONS, TERMS AND AGREEMENTS

Maximum Penalties

A violation of 18 U.S.C. Section 111(a)(1) is punishable by a maximum term of 8 years, a fine of not more than \$250,000, a supervised release term of not more than three

1 (3) years and a special assessment of \$ 100. The special assessment is due and payable at
2 the time the defendant enters the plea of guilty, and must be paid by the time of sentencing
3 unless the defendant is indigent. If the defendant is indigent, the special assessment will
4 be collected according to Title 18, United States Code, Chapters 227 and 229.

5 Agreements Regarding Sentence

6 Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the government and the defendant
7 stipulate and agree that the following is an appropriate disposition of this case:

8 33 months of imprisonment.

9 The parties agree and stipulate that the defendant's Criminal History Category is VI.

10 The sentence in this case shall run **consecutive** to the defendant's sentence in 06-
11 CR-00021-LC-1.

12 If the District Court finds it appropriate, the Court may sentence the defendant at the
13 time of the Change of Plea hearing, and allow the defendant and the government to waive
14 preparation of the Pre-Sentence Report (PSR).

15 If the Court departs from the terms and conditions set forth in this plea agreement,
16 either party may withdraw.

17 If the Court, after reviewing this plea agreement, concludes any provision is
18 inappropriate, it may reject the plea agreement under Rule 11(c)(5), Fed. R. Crim. P., giving
19 the defendant, in accordance with Rule 11(d)(2)(A), Fed. R. Crim. P., an opportunity to
20 withdraw the defendant's guilty plea.

21 Plea Addendum.

22 The United States may file a Plea Addendum in this case, even though there may or
23 may not be any additional terms. Defendant and defendant's attorney acknowledge that no
24 threats, promises or representations exist beyond the terms of this plea agreement.

25 Waiver of Defenses and Appeal Rights

26 The defendant waives any and all motions, defenses, probable cause determinations,
and objections which the defendant could assert to the information, indictment, or to the

1 petition to revoke, or to the Court's entry of judgment against the defendant and imposition
2 of sentence upon the defendant providing the sentence is consistent with this agreement.
3 The defendant further waives: (1) any right to appeal the Court's entry of judgment against
4 defendant; (2) any right to appeal the imposition of sentence upon defendant under Title 18,
5 United States Code, Section 3742 (sentence appeals); and (3) any right to collaterally attack
6 defendant's conviction and sentence under Title 28, United States Code, Section 2255, or
7 any other collateral attack. The defendant acknowledges that this waiver shall result in the
8 dismissal of any appeal or collateral attack the defendant might file challenging his/her
9 conviction or sentence in this case. If the defendant files a notice of appeal, or a habeas
10 petition, notwithstanding this agreement, defendant agrees that this case shall, upon motion
11 of the government, be remanded to the district court to determine whether defendant is in
12 breach of this agreement and, if so, to permit the government to withdraw from the plea
13 agreement.

14 Immigration Consequences

15 Defendant recognizes that pleading guilty may have consequences with respect to
16 his/her immigration status if defendant is not a citizen of the United States. Under federal
17 law, a broad range of crimes are removable offenses, including the offense(s) to which
18 defendant is pleading guilty. Removal and other immigration consequences are the
19 subject of a separate proceeding, however, and defendant understands that no one, including
20 defendant's attorney or the district court, can predict to a certainty the effect of defendant's
21 conviction on defendant's immigration status. Defendant nevertheless affirms that he/she
22 wants to plead guilty regardless of any immigration consequences that this plea may entail,
23 even if the consequence is defendant's automatic removal from the United States.

24 Reinstitution of Prosecution

25 Nothing in this agreement shall be construed to protect the defendant in any way
26 from prosecution for perjury, false declaration or false statement, or any other offense
committed by the defendant after the date of this agreement. In addition, if the defendant

1 commits any criminal offense between the date of this agreement and the date of
2 sentencing, the government will have the right to withdraw from this agreement. Any
3 information, statements, documents and evidence which the defendant provides to the
4 United States pursuant to this agreement may be used against the defendant in all such
5 proceedings.

6 If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any
7 court in a later proceeding, the government will be free to prosecute the defendant for all
8 charges and/or allegations of supervised release violations as to which it has knowledge,
9 and any charges and/or allegations of supervised release violations that have been dismissed
10 or not alleged because of this plea agreement will be automatically reinstated. In such
11 event, the defendant waives any objections, motions, or defenses based upon the Speedy
12 Trial Act or the Sixth Amendment to the Constitution as to the delay occasioned by the later
13 proceedings. Defendant agrees that the stipulated sentencing ranges set forth under
14 "Agreements Regarding Sentence" will not be offered if prosecution is re-instituted.

15 Disclosure of Information to U.S. Probation Office

16 The defendant understands the government's obligation to provide all information
17 in its file regarding the defendant to the United States Probation Office. The defendant
18 fully understands and agrees to cooperate fully and truthfully with the United States
19 Probation Office in providing all information requested by the probation officer¹.

20 Effect of Other Proceedings

21 This agreement does not preclude the United States from instituting any civil or
22 administrative proceedings as may be appropriate now or in the future.

23 The defendant understands that if the defendant violates any of the conditions of the
24 defendant's supervised release, the supervised release may be revoked. Upon such
25 revocation, notwithstanding any other provision of this agreement, the defendant may be
26

¹ The District Court, in its discretion, may allow the defendant and the government to waive preparation of the PSR.

1 required to serve a term of imprisonment or the defendant's sentence may otherwise be
2 altered.

3 WAIVER OF DEFENDANT'S RIGHTS

4 I have read each of the provisions of the entire plea agreement with the assistance
5 of counsel and understand its provisions. I have discussed the case and my constitutional
6 and other rights with my attorney. I understand that by entering my plea of guilty I will be
7 giving up my right to plead not guilty; to trial by jury; to confront, cross-examine, and
8 compel the attendance of witnesses; to present evidence in my defense; to remain silent and
9 refuse to be a witness against myself by asserting my privilege against self-incrimination;
10 all with the assistance of counsel, to be presumed innocent until proven guilty beyond a
11 reasonable doubt, and to appeal.

12 I agree to enter my guilty plea as indicated above on the terms and conditions set
13 forth in this agreement.

14 I have been advised by my attorney of the nature of the charge to which I am
15 entering my guilty plea. I have further been advised by my attorney of the nature and range
16 of the possible sentence.

17 My guilty plea is not the result of force, threats, assurance or promises other than the
18 promises contained in this agreement. I agree to the provisions of this agreement as a
19 voluntary act on my part, rather than at the direction of or because of the recommendation
20 of any other person, and I agree to be bound according to its provisions.

21 I agree that this written plea agreement contains all the terms and conditions of my
22 plea and that promises made by anyone (including my attorney) that are not contained
23 within this written plea agreement are without force and effect and are null and void.

24 I am satisfied that my defense attorney has represented me in a competent manner.

25 I am not now on or under the influence of any drug, medication, liquor, or other
26 intoxicant or depressant, which would impair my ability to fully understand the terms and
conditions of this plea agreement.

ELEMENTS OF THE OFFENSE

1. The defendant did intentionally and forcibly assault a federal officer.
2. The defendant did so while the federal officer was engaged in his/her official duties.
3. Further, the act involved physical contact.

FACTUAL BASIS AND SENTENCING FACTORS

I agree that the following facts accurately describe my conduct in connection with the offense to which I am pleading guilty and that if this matter were to proceed to trial the government could prove these facts beyond a reasonable doubt:

On June 1, 2011, Arnold Lindsay was housed at the United States Penitentiary in Tucson, in the District of Arizona. On that date, Lindsay assaulted Associate Warden S.M. by intentionally spitting on her, making physical contact with her face and neck. Associate Warden S.M. is a federal officer and was engaged in her official duties at the time of the assault.

4/10/12
Date

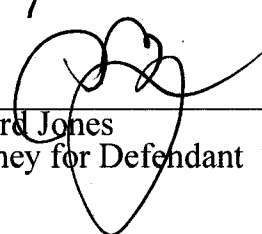

Arnold Lindsay
Defendant

DEFENSE ATTORNEY'S APPROVAL

I have discussed this case and the plea agreement with my client in detail and have advised the defendant of all matters within the scope of Rule 11, Fed. R. Crim. P., the constitutional and other rights of an accused, the factual basis for and the nature of the offense to which the guilty plea will be entered, possible defenses, and the consequences of the guilty plea, including the defendant's waiver of the right to appeal. No assurances, promises, or representations have been given to me or to the defendant by the government or by any of its representatives which are not contained in this written agreement. I concur in the entry of the plea as indicated above and on the terms and conditions set forth in this agreement as in the best interests of my client. I agree to make a bona fide effort to ensure the guilty plea is entered in accordance with all the requirements of Rule 11, Fed. R. Crim. P.

1 I translated or caused to be translated this agreement from English into Spanish to
2 the defendant on the _____ day of N/A, 2012.

3
4 Date 4/5/12

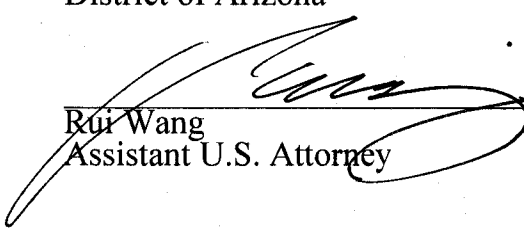
5 
Richard Jones
Attorney for Defendant

6
7 GOVERNMENT'S APPROVAL

8 I have reviewed this matter and the plea agreement. I agree on behalf of the United
9 States that the terms and conditions set forth are appropriate and are in the best interests of
10 justice.

11 ANN BIRMINGHAM SCHEEL
12 United States Attorney
District of Arizona

13
14 Date 4/5/12

15 
Rui Wang
Assistant U.S. Attorney